

**TOWN OF DAVIE  
TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Joseph Montopoli, Fire Chief/EMC, 954-797-1842

**PREPARED BY:** Frank Suriano, Assistant Chief, 954-797-1843

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** All

**ITEM REQUEST:** Schedule for Council Meeting

**TITLE OF AGENDA ITEM:** AGREEMENT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN OF DAVIE TO ENTER INTO AN AGREEMENT WITH BURTON & ASSOCIATES, INC. TO PROVIDE A COMPREHENSIVE IMPACT FEE STUDY. (\$32,141)

**REPORT IN BRIEF:** This action is necessary to proceed with the comprehensive impact fee study. Burton & Associates will reevaluate and update current Public Safety Impact Fee program and Parks and Recreation and Open Space Impact Fee program analyzing the fiscal impacts of anticipated development on public safety, parks and recreation, and open space equipment and facilities in the Town of Davie. The attached contract is a result of negotiations authorized by R-2008-64.

**PREVIOUS ACTIONS:** R-2008-64

**CONCURRENCES:** The contract was negotiated by the Procurement Manager, Fire Chief, Police Chief, Parks and Recreation Director and Assistant Town Administrator.

**FISCAL IMPACT:** Yes

Has request been budgeted? Yes

If yes, expected cost: \$ 32,141

Account Name:	Fire Dept - contractual services account (001-0602-522-04-07)	-	\$10,713.66
	Police Dept - contractual services account (001-0525-521-03-06)	-	\$10,713.67
	Parks & Rec - contractual services account (001-0812-572-03-24)	-	\$10,713.67

**RECOMMENDATION(S):** Motion to approve the resolution

**Attachment(s):** Resolution, Professional Services Agreement, Exhibit A and Exhibit B

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA,  
AUTHORIZING THE TOWN OF DAVIE TO ENTER INTO AN  
AGREEMENT WITH BURTON & ASSOCIATES, INC. TO PROVIDE  
A COMPREHENSIVE IMPACT FEE STUDY

WHEREAS, The Town selected Burton and Associates, Inc as the highest ranking  
firm to provide the required comprehensive impact fee study; and

WHEREAS, staff negotiated a contract pursuant to Resolution R-2008-64; and

WHEREAS, The Town Council authorizes the Mayor to enter into an agreement  
with Burton & Associates, Inc.; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN  
OF DAVIE, FLORIDA.

SECTION 1. The Town Council of the Town of Davie does hereby authorize the  
Mayor to enter into an agreement with Burton & Associates as the firm to provide the  
required comprehensive impact fee study; and

SECTION 2. This resolution shall take effect immediately upon its passage and  
adoption.

PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2008

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2008

**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE  
TOWN OF DAVIE AND BURTON & ASSOCIATES, INC.  
FOR A COMPREHENSIVE IMPACT FEE STUDY**

THIS AGREEMENT, made and entered into the 7th day of May ,  
2008, by and between:

TOWN OF DAVIE, FLORIDA  
a municipal corporation  
6591 Orange Drive  
Davie, Florida 33314  
(hereinafter referred to as "TOWN")

BURTON & ASSOCIATES, INC.  
a Florida corporation  
200 Business Park Circle, Suite 101  
St. Augustine, Florida 32095  
(hereinafter referred to as "CONSULTANT")

WHEREAS, the TOWN issued a Request for Proposal (B-08-21)  
for a Comprehensive Impact Fee Study; and

WHEREAS, The TOWN selected Burton and Associates, Inc as  
the highest ranking firm to provide the required comprehensive impact fee study; and

WHEREAS, The TOWN hereby authorized the Mayor to  
enter into this agreement with Burton & Associates, Inc.

NOW, THEREFORE, in consideration of the benefits  
provided by CONSULTANT to the citizens of Davie and the covenants and  
conditions herein expressed and the faithful performance of all such covenants  
and conditions, the parties agree as follows:

Section 1.

1.01 The above recitals are true and correct and are incorporated herein.

## Section 2. TERM

2.01 This Agreement shall be effective upon the approval of the TOWN Council and shall terminate upon the completion of the services required under this Agreement.

2.02 CONSULTANT shall complete the study within ninety (90) calendar days of the issuance of a Notice To Proceed. CONSULTANT shall provide a draft of the study no later than seventy-five (75) calendar days after issuance of the Notice To Proceed and will provide the final report within ninety (90) calendar days of the Notice To Proceed. A presentation to the TOWN Council, if necessary, will be scheduled for a date to be determined by the TOWN.

2.03 CONSULTANT acknowledges that time is of the essence in the completion of the services required under this Agreement. CONSULTANT agrees that all work shall be completed regularly, diligently, and uninterrupted at such a rate of progress as will ensure full completion within the specified time. Failure to complete the work within the time period specified shall be considered a default.

## Section 3. SCOPE OF SERVICES

3.01 CONSULTANT shall complete the required Comprehensive Impact Fee Study in accordance with the CONSULTANT's "Project Work Plan and Cost Estimate" and is attached hereto and incorporated as Exhibit "A". The TOWN's RFP B-08-21 and the CONSULTANT's proposal response dated February 21, 2008 are incorporated herewith and made a part of this Agreement by reference.

3.02 The parties acknowledge and agree that the work to be performed by the CONSULTANT shall include:

- a) Reevaluate and update the current Public Safety Impact Fee program and the Parks and Recreation and Open Space Impact Fee program analyzing the fiscal impacts of anticipated development on public safety, parks and recreation, and open space equipment and facilities in the TOWN of Davie.
- b) Analyze the impact of development on the need for Police, Fire Rescue, Parks and Recreation, and Open Space equipment and facilities, both existing and future development, based on the demand of services, and calculate impact fees to cover the resulting costs.
- c) Research and evaluate any current Public Safety, Parks and Recreation, and Open Space issues and assist the TOWN in identifying policy issues that may be in

d) The Public Safety Impact Fee Program and the Parks and Recreation and Open Space Impact Fee program shall satisfy legal requirements for the calculation and documentation of such fees, including all relevant provisions of the U.S. Constitution, Florida State Constitution, and Florida statutes.

3.03 CONSULTANT shall provide two (2) hard copies of the final report in addition to an electronic file in the format requested by the TOWN.

4.01 The TOWN shall pay the CONSULTANT an amount not to exceed  
\$32,141

5.01 Timely review and comment on all work products submitted by CONSULTANT and schedule all required meetings on a timely basis.

6.01 Prior to commencing work, the CONSULTANT shall provide TOWN with certified copies of all insurance policies providing coverage as required.

6.02 The CONSULTANT shall secure and maintain, at its own expense, and keep in effect during the full period of the agreement a policy or policies of insurance, which must include the following coverages and minimum limits of liability:

(a) **Professional Liability Insurance** in an amount not less than \$1,000,000.00 per occurrence.

(b) **Worker's Compensation and Employer's Liability Insurance** for all employees of the CONSULTANT engaged in work under the Agreement in accordance with the laws of the State of Florida. The CONSULTANT shall agree to be responsible for the employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

(c) **Comprehensive General Liability Insurance** with the following minimum limits of liability:

Damage following Liability and \$1,000,000.00 Combined Single Limit, Bodily Injury and Property Liability per occurrence. Coverage shall specifically include the minimum limits not less than those required for Bodily Injury Property Damage:

Damage \$500,000.00 Combined Single Limit, Bodily Injury and Property Liability per occurrence:

(1) Premises and Operations;  
(2) Independent Contractors;  
(3) Products and Completed Operations;  
(4) Broad Form Property Damage;  
(5) Broad Form Contractual Coverage applicable to the Contract and specifically confirming indemnification and hold harmless Contract;  
(6) Personal Injury Coverage with employment and contractual exclusions removed and deleted;  
and

(d) **Comprehensive Automobile Liability Insurance** for all owned, non-owned and hired automobiles and other vehicles used by the CONSULTANT in the performance of the work with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence.

6.03 ALL LIABILITY INSURANCE POLICIES SHALL SPECIFICALLY PROVIDE THAT THE TOWN OF DAVIE IS AN ADDITIONAL NAME INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED



COVERAGES AND THE OPERATIONS OF THE CONSULTANT UNDER  
THE

AGREEMENT. Insurance Companies selected must be acceptable to TOWN.

All of  
the policies of insurance so required to be purchased and maintained shall  
contain a  
provision or endorsement that the coverage afforded shall not be canceled,  
materially changed or renewal refused until at least thirty (30) calendar days  
written notice has been given to TOWN by certified mail.

6.04 The required insurance coverage shall be issued by an insurance company  
duly  
authorized and licensed to do business in the State of Florida with the following  
minimum qualifications in accordance with the latest edition of A.M. Best's  
Insurance Guide:

Financial Stability B+ to A+

6.05 The CONSULTANT is required to submit a list of claims presently  
outstanding  
against their professional liability coverage. This information must be provided by  
and signed by the agent of the insurance carrier. If no outstanding claims exist, a  
statement of this fact must be provided by and signed by the agent of the insurance  
carrier.

Section 7. INDEMNIFICATION

7.01 GENERAL INDEMNIFICATION: The CONSULTANT agrees to indemnify  
and hold harmless the TOWN, its officers, agents, and employees, from any and all  
liability, defense costs, including attorneys' fees, and all other fees incidental to the  
defense, loss, or damage the TOWN may suffer as a result of claims, demands,  
costs, or judgments against it arising from the subject project. Nothing in this  
agreement shall be construed to affect in any way the TOWN'S rights, privileges,  
and immunities as set forth in Florida Statutes 768.28. Nothing in the Agreement  
shall be construed to benefit or grant any claim or cause of action to any third party.

7.02 PATENT AND COPYRIGHT INDEMNIFICATION: The  
CONSULTANT agrees to indemnify, defend, save and hold harmless the  
TOWN, its officers, agents and employees, from all claims, damages, losses,  
liabilities and expenses arising out of any alleged infringement of copyrights,  
patent rights and/or the unauthorized or unlicensed use of any material,  
property or other work in connection with the performance of the  
Agreement. Any and all work products produced during the term of this  
contract by CONSULTANT shall be the sole property of the TOWN except  
as provided for in Section 8.

## Section 8. PUBLIC RECORDS LAW EXEMPTION

The TOWN and CONSULTANT shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law) except as provided for in the following paragraphs.

The Consultant may use its proprietary Financial Analysis and Management System (FAMS-XL<sup>®</sup>) Impact Fee Model in the accomplishment of work under this contract. This contract recognizes that FAMS-XL<sup>®</sup> is a proprietary product of CONSULTANT, includes trade secrets and, as such, the FAMS-XL<sup>®</sup> model and its source code are exempt from public records laws in accordance with FS 815.045, a copy of which is included below:

FS 815.045 Trade secret information.--The Legislature finds that it is a public necessity that trade secret information as defined in s. 812.081, and as provided for in s. 815.04(3), be expressly made confidential and exempt from the public records law because it is a felony to disclose such records. Due to the legal uncertainty as to whether a public employee would be protected from a felony conviction if otherwise complying with chapter 119, and with s. 24(a), Art. I of the State Constitution, it is imperative that a public records exemption be created. The Legislature in making disclosure of trade secrets a crime has clearly established the importance attached to trade secret protection. Disclosing trade secrets in an agency's possession would negatively impact the business interests of those providing an agency such trade secrets by damaging them in the marketplace, and those entities and individuals disclosing such trade secrets would hesitate to cooperate with that agency, which would impair the effective and efficient administration of governmental functions. Thus, the public and private harm in disclosing trade secrets significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of trade secrets.

Therefore, if CONSULTANT uses FAMS-XL<sup>®</sup> in the accomplishment of work under this contract, CONSULTANT may not be compelled to disclose FAMS-XL<sup>®</sup>, or its source code, to the TOWN or any other parties for any purpose or reason and the TOWN, as a licensee of FAMS-XL<sup>®</sup> in accordance with the provisions of Section 9, will not disclose and may not be compelled to disclose FAMS-XL<sup>®</sup> or its source code, to any other parties for any purpose or reason. However, CONSULTANT will conduct interactive work sessions with TOWN staff to review the input and results of analyses conducted using FAMS-XL<sup>®</sup> and will disclose and deliver to the TOWN output schedules from the FAMS-XL<sup>®</sup> model for the purpose of accomplishing the TOWN's business. Output schedules of FAMS-XL<sup>®</sup> that are delivered to the TOWN in deliverable products such as reports, presentations, etc. are excluded from this trade secret exemption.

## Section 9. FAMS-XL® IMPACT FEE MODEL LICENSE

CONSULTANT agrees to license its FAMS-XL® Impact Fee Model to the TOWN in accordance with the terms and conditions set forth in Exhibit “B” – “FAMS-XL® Impact Fee Model License Agreement”. The TOWN and CONSULTANT hereby agree to all terms and conditions included in Exhibit “B”.

## Section 10. TERMINATION AND DEFAULT

10.01 In the event CONSULTANT shall default in any of the terms, obligations, restrictions or conditions of the Proposal documents, TOWN shall give written notice by certified mail, return receipt requested to CONSULTANT of default and that such default shall be corrected or actions taken to correct such default shall be commenced within ten (10) calendar days thereof. In the event CONSULTANT has failed to correct the conditions of default or the default is not remedied to the satisfaction and approval of TOWN, TOWN shall have all legal remedies available to it, including, but not limited to termination of this Agreement in which case the CONSULTANT shall be liable for all procurement and reprocurement costs and any and all damages permitted by law arising from the default and breach of this Agreement.

10.02 TOWN shall have the right to terminate the Agreement, without cause, by giving written notice to CONSULTANT of such termination and specifying the effective date thereof, at least thirty (30) calendar days prior to the effective date of termination.

## Section 11. RECORDS AND AUDIT

11.01 TOWN reserves the right to audit the records of CONSULTANT relating to this project at any time during the performance and term of the Agreement and for a period of three (3) years after completion and acceptance by TOWN. If required by TOWN, CONSULTANT shall agree to submit to an audit by an independent certified public accountant selected by TOWN. CONSULTANT shall allow TOWN to inspect, examine and review the records of CONSULTANT at any and all times during normal business hours during the term of this Agreement.

## Section 12. INDEPENDENT CONTRACTOR

12.01 It is understood and agreed that CONSULTANT is and shall remain an independent contractor with respect to the services being performed by

CONSULTANT pursuant to this Agreement and shall not, for any purpose, be deemed an employee of TOWN.

### Section 13. CONFLICT OF INTEREST

13.01 CONSULTANT covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with TOWN. CONSULTANT further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of CONSULTANT or its employees, must be disclosed in writing to TOWN.

13.02 CONSULTANT is aware of the conflict of interest laws of Broward County and the State of Florida, Chapter 112, Florida Statutes (1993), as amended, and agrees that it will fully comply in all respects with the terms of said laws.

13.03 CONSULTANT warrants that it has not employed or retained any person employed by TOWN to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay, any public official or person employed by TOWN any fee, commission, percentage, brokerage fee or gift of any kind, contingent upon or resulting from the award of his privilege.

### Section 14. ASSIGNMENT

14.01 This is a personal services Agreement whereby TOWN has expressly retained CONSULTANT. This Agreement is not assignable or transferable in whole or in part without the prior expressed written consent of the TOWN which consent can be arbitrarily withheld.

### Section 15. COMPLIANCE WITH LAWS

15.01 CONSULTANT shall comply with all statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, Town of Davie and of any other public authority which may be applicable to this Agreement.

### Section 16. VENUE

16.01 Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida and the prevailing party to any resultant judgment shall be entitled to an award of all reasonable attorney's fees, paralegal expenses,

interest and court costs incurred by such prevailing party against the losing party including reasonable appellant attorney's fees, interest and taxable costs.

#### Section 17. GOVERNING LAW

17.01 The validity, construction and effect of this agreement shall be governed by the laws of the State of Florida.

#### Section 18. INSOLVENCY

18.01 In the event that either party shall become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, or become subject to rehabilitation, then, at the option of the other party and immediately upon written notice, this Agreement shall terminate and be of no further force and effect.

#### Section 19. ENTIRE AGREEMENT

19.01 This Agreement contains the entire understanding of the parties relating to the subject matter hereof superseding all prior communications between the parties, whether oral or written, and this Agreement may not be altered, amended, modified or otherwise changed nor may any of the terms hereof be waived, except by a written instrument executed by both parties. The failure of a party to seek redress for violation of or to insist on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

#### Section 20. SEVERABILITY

20.01 Should any part, term or provision of this Agreement be by the courts decided to be illegal or in Conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

#### Section 21. NOTICES

21.01 All notices or other communications required by this Agreement shall be in writing and deemed delivered upon mailing by certified mail, return receipt requested, to the following persons and addresses unless otherwise specified herein:

TOWN: Fire Chief  
Town of Davie  
6591 Orange Drive  
Davie, Florida 33314

CONSULTANT: Michael Burton  
Burton & Associates, Inc.  
200 Business Park Circle, Suite 101  
St. Augustine, FL 32095

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first written above, in two (2) counterparts, each of which shall without proof or accounting for the other counterpart be deemed an original Contract.



CONSULTANT

Michael E. Burton

BY

President

Title

Witness:

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:  
Town of Davie, a Florida  
Municipal Corporation

OWNER:

\_\_\_\_\_  
Russell Muniz  
Town Clerk

(Seal)

\_\_\_\_\_  
Tom Truex  
Mayor

\_\_\_\_\_  
Gary Shimun  
Town Administrator

DATE: \_\_\_\_\_

APPROVED AS TO FORM AND  
CORRECTNESS:

\_\_\_\_\_  
John Rayson  
Town Attorney  
Town of Davie

Council Approved: \_\_\_\_\_  
Date

**Exhibit "A"****Town of Davie**

Comprehensive Impact Fee Study

**PROJECT WORK PLAN & COST ESTIMATE***Prepared by Burton & Associates***BURTON & ASSOCIATES**

PROJECT TASKS		ESTIMATED MAN-HOURS					Total Project
		Project Principal	Project Manager	Project Consultant	Clerical		
		\$195	\$175	\$95	\$40		
		Hourly rate->					
TASK 1	Initiate the Project and Obtain and Review Relevant Information and Data.						
	a. Conduct Project Kick-off meeting to validate project objectives, identify required data and confirm project responsibilities and project monitoring and reporting procedures.	1	1	1	0	3	
	b. Identify required data and information and determine appropriate source for the required information.	0	1	1	0	2	
	c. Review the Town's Comprehensive Plan to determine appropriate level of service standards for applicable areas, population projections and capital improvement elements for applicable areas.	1	1	2	0	4	
	d. Update population projections based upon census data and permitting and development data and	0	2	4	0	6	
	e. Obtain fixed asset data for applicable assets.	0	1	2	0	3	
TASK 2	Calculate Impact Fees for Police, Fire, Parks & Recreation & Open Space and General Government Services						
	a. Adjust the impact fee calculation module of our FAMS-XL® model to meet the specific requirements and configuration of the City for police, fire, parks & recreation, open space and general government services.	2	12	32	0	46	
	b. Input level of service, population and asset data into the model and calculate preliminary impact fees for each	2	6	20	0	28	
	c. Input data regarding capital costs included in user fees and/or taxes for calculation of impact fee credit to avoid "double recovery" of costs in the impact fees and user fees and/or taxes.	1	1	4	0	6	
	d. Review model output, adjust and calibrate.	1	3	4	0	8	
	e. Conduct an interactive work session with Town Staff to review the preliminary impact fee calculation with	3	3	3	0	9	
	f. Make adjustments to the impact fee model.	1	2	4	0	7	
	g. Conduct an interactive work session with Town Staff to review adjusted impact fee calculation with Town staff.	3	3	3	0	9	
TASK 4	Present Impact Fee Options at Full versus Partial Cost Recovery						
	a. Conduct a survey of similar impact fees in other communities in South Florida (up to 10 communities).	0	1	4	16	21	
	b. recovery alternatives, 3) the Town's current impact fees, and 4) the survey results of fees in other South Florida communities.	0	1	2	8	11	
TASK 5	Develop Methodology for Implementation of Impact Fees						
	a. Identify alternative methods for calculating impact fees for specific developments by land use category.	0.5	1	2	0	3.5	
	b. Determine and document recommended methodology for calculating impact fees for specific development by land use category based upon the impact fees per EDU/ERU.	0.5	2	4	0	6.5	
TASK 6	Prepare Final Report						
	a. Prepare a Draft Report for review by Town staff.	1	4	12	8	25	
	b. Review the Draft Report with Town staff.	1	1	1	0	3	
	c. Make adjustments and prepare a Final Draft Report for presentation to the Town Council.	1	2	4	4	11	
	d. Present the Final Draft Report to the Town Council.	2	2	2	0	6	
	e. Make adjustments and prepare a Final Report and deliver to the Town.	1	1	2	0	4	



**Exhibit "A"****Town of Davie**

Comprehensive Impact Fee Study

**PROJECT WORK PLAN & COST ESTIMATE***Prepared by Burton & Associates***BURTON & ASSOCIATES**

TASK / PROJECT TASKS	ESTIMATED MAN-HOURS					Total Project
	Project Principal	Project Manager	Project Consultant	Clerical		
	\$195	\$175	\$95	\$40		
<i>Hourly rate--&gt;</i>						
<b>TASK 7 Assist in Preparation of an Impact Fee Ordinance and Attend Hearing for Adoption.</b>						
a. Prepare schedules of impact fees for inclusion in the Ordinance and prepare a Draft Impact Fee Ordinance.	0.5	4	12	4		20.5
b. Prepare methodology for calculation of impact fee amounts for specific development.	0.5	1	4	4		9.5
c. Conduct a conference call with the Town attorney to review ordinance.	1	1	1	0		3
d. Make adjustments as required.	0	1	2	0		3
e. Attend two hearings for adoption of the impact fees.	4	4	0	0		8
<b>TOTAL ESTIMATED MAN-HOURS</b>	<b>28</b>	<b>62</b>	<b>132</b>	<b>44</b>		<b>266</b>
<b>TOTAL ESTIMATED CONSULTING FEE</b>	<b>\$5,460</b>	<b>\$10,850</b>	<b>\$12,540</b>	<b>\$1,760</b>		<b>\$30,610</b>
<b>ESTIMATED EXPENSES</b>						<b>\$1,531</b>
<b>TOTAL ESTIMATED COST</b>						<b>\$32,141</b>

SOURCE: BURTON &amp; ASSOCIATES

4/28/2008

## **Exhibit “B”**

### **License Agreement for the Use of Burton & Associates’ FAMS-XL© Impact Fee Model (FAMS-XL©)**

#### ***A. Background***

This is a license agreement between B&A, Inc. (B&A) and The Town of Davie (CLIENT) for CLIENT’s use of FAMS-XL©, a proprietary product of B&A, as a tool in the development and update of CLIENT’s impact fees.

The FAMS-XL© Impact Fee Model is a proprietary model that calculates governmental impact fees. FAMS-XL© was developed by B&A and will be set up and adapted for CLIENT’s specific situation and configuration during the Comprehensive Impact Fee Study (Study) being conducted for CLIENT by B&A. This License Agreement, even if executed by both parties, is only valid upon completion of the above referenced Study by B&A. FAMS-XL© is a spreadsheet model and must be run on Microsoft Excel©, however, Microsoft Excel© is not included as a part of this license agreement.

#### ***B. License Agreement***

B&A agrees to lease FAMS-XL© under license to CLIENT under the following terms and conditions:

##### ***1. Term of the Agreement***

The term of this agreement is 5 years from the date of its execution, renewable upon the agreement of both parties for an unlimited number of subsequent 5 year terms. If CLIENT chooses not to renew this agreement at any point in the future, 1) all FAMS-XL© programs and copies will be returned to B&A within 30 days of the termination of this agreement, and 2) all confidentiality, non compete and non disclosure provisions of this agreement will survive into perpetuity.

If B&A chooses not to renew this agreement at any point in the future, 1) CLIENT will have to option to purchase the source code rights to FAMS-XL© for \$15,000, payable thirty days after termination of this agreement, 2) B&A will have no further obligation to provide support or updates to FAMS-XL©, and 3) all confidentiality, non compete and non disclosure provisions of this agreement will survive into perpetuity.

If B&A chooses not to renew this agreement at any point in the future and CLIENT chooses not to purchase the source code rights to FAMS-XL© within 30 days of the termination of this agreement, CLIENT relinquishes its rights to the use of FAMS-XL© and 1) all FAMS-XL© programs and copies will be returned to B&A within 30 days of the termination of this agreement, and 2) all confidentiality, non compete and non disclosure provisions of this agreement will survive into perpetuity.

2. **License Fee**

The license fee for the use of FAMS-XL© is \$0, assuming that the above referenced Study is completed by B&A, which will include the initialization of FAMS-XL© for the initial calculation of police, fire, parks & recreation, open space and general government services impact fees.

3. **Use of FAMS-XL© by CLIENT**

This license agreement provides that CLIENT can use FAMS-XL© on its computers, on CLIENT property only for the sole benefit of CLIENT in calculation and update of the above referenced impact fees, subject to the provisions of Section 7. CLIENT may not use FAMS-XL© for the benefit of other parties, nor may CLIENT allow other parties to use FAMS-XL© for any purpose or reason. CLIENT may not copy or replicate FAMS-XL© in any way or form and CLIENT may not give or sell FAMS-XL © to any other party for any purpose or reason.

4. **Nondisclosure**

It is recognized that FAMS-XL© is a proprietary product of B&A, includes trade secrets and, as such, the FAMS-XL© model and its source code is exempt from public records laws.

Therefore, CLIENT may not disclose FAMS-XL©, or its source code, to any other parties for any purpose or reason; however, output schedules from the FAMS-XL© model may be disclosed to others for the purpose of accomplishing CLIENT's business. Output schedules of FAMS-XL© may not be disclosed to other parties for any other purpose or reason without the express written consent of B&A.

5. **Noncompete**

B&A uses FAMS-XL© in its business of providing consulting services to Cities, Towns, Counties and other government agencies. FAMS-XL© is a proprietary product of B&A, contains trade secrets and provides B&A with significant market advantages in its business. Therefore, CLIENT may not use or replicate FAMS-

XL©, or allow other parties to use or replicate FAMS-XL© to compete with B&A in any aspect of B&A's business.

**6. Source Code**

FAMS-XL© is programmed in Microsoft Excel©. As such, its source code is not compiled and although the FAMS-XL© model will be delivered to CLIENT with protection features enacted on cells including the source code, the source code is available to CLIENT through the normal Excel© functions if the protection features are disabled. CLIENT agrees not to disable the protection features or change the source code without the express written consent of B&A.

**7. Warranties**

B&A warrants that at the time that FAMS-XL© is delivered to CLIENT the results of FAMS-XL© represent an accurate calculation of the subject impact fees in accordance with case law and generally accepted rate making practice regarding impact fees. Because it is possible for CLIENT to alter the source code by disabling the protection features referred to in item 4, B&A does not provide the above described warranty at any time after FAMS-XL© is delivered to CLIENT, unless CLIENT retains B&A to review and validate CLIENT's calculations using FAMS-XL©. Furthermore, CLIENT agrees that it will not enact adjustments to the subject impact fees using the FAMS-XL© model without retaining B&A to perform a review and validation using FAMS-XL©, the terms of such review and validation to be negotiated and agreed to in writing by both parties prior to B&A proceeding with the review and validation. This provision is included to protect CLIENT and B&A from liability relative to potential changes to FAMS-XL© source code that may be intentionally or inadvertently be made by CLIENT which may cause the results produced by FAMS-XL© to be inaccurate.

**8. Termination**

- a. CLIENT may terminate this license Agreement at any time with 30 days notice to B&A. All monies owed B&A must be paid prior to such termination and all copies of the FAMS-XL© model must be returned to B&A on the termination date.
- b. B&A may terminate this License Agreement if CLIENT violates any of the provisions of the Agreement and any and all monies owed to B&A by CLIENT at the time of such termination will become due immediately and all copies of the FAMS-XL© model must be returned to B&A on the termination date.
- c. If either B&A or CLIENT terminate this Agreement under the terms of this section, neither party will have any obligations or liabilities one to the

other, except for unpaid fees and surviving terms and conditions as specified in Section B.9.

**9. Surviving Terms and Conditions**

If the FAMS-XL© License is terminated under the provisions of Section B.8, or for any reason, the nondisclosure and noncompete provisions of Sections B.4 and B.5 will remain in force in perpetuity.

**10. Enhancements**

- a. In the course of its business, B&A may make enhancements to the FAMS-XL© model from time to time. If enhancements are made, each year on the anniversary date of this Agreement B&A will notify CLIENT of such available enhancements and CLIENT may opt to have those enhancements installed on CLIENT's FAMS-XL© model. The cost of installing such enhancements will be negotiated between B&A and CLIENT at such time as CLIENT opts to have the enhancements installed.
- b. In addition, CLIENT may from time to time desire that specific enhancements be made to CLIENT's version of FAMS-XL©. If such specific enhancements are desired, the cost of making and installing such enhancements will be negotiated between B&A and CLIENT at such time as the enhancements are requested by CLIENT.
- c. If enhancements are made to CLIENT's version of FAMS-XL© under the provisions of Sections B.10.a and B.10.b., the enhancements will become the proprietary property of B&A and all provisions of this Agreement will apply to such enhancements for the duration of the term of this Agreement.

**D. Acceptance**

By affixing of signatures on the contract of which this License Agreement Exhibit is a part and in which it is included by reference therein, both parties agree to and accept all terms and conditions of this Agreement.